IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 736 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

CHANDRAKANT GORDHANDAS SHETH

Appearance:

MR KC SHAH, APP for Appellalnt

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 14/02/2001

ORAL JUDGEMENT

1. This is an appeal preferred by the State of Gujarat under sec. 378(1)(3) of CrPC against the order of acquittal passed by the ld. Judicial Magistrate (F.C.), Modasa on 30.10.1999 in Crimianl Case No. 2835/97.

2. Respondents accused were prosecuted by Mr.

G.M.Dalwadi, Food Inspector serving with Food & Drugs Department of Himmatnagar District for the offences punishable under sections 2(ix)(e) of Prevention of Food Adulteration Act (hereinafter referred to as the "PFA Act"). At the end of trial, ld. Magistrate acquitted the accused persons of the charges levelled against them.

3. According to the prosecution, on 3.6.1997, at about 11.30 A.M., complainant had visited the shop of accused no.1 with Panch Prahladbhai Jain and after disclosing his proper identity as to his status and purpose of visit, he took a sample of pickle sold in the name & style of " Mayur Chhap Athana (Pickles) ". Description of the sample taken was recorded in the panchanama and the entire procedure was described. Sample was sent to Public Analyst for analysis and was requested to test it for turmeric. On analysis, Laboratory could not found any adulteration, but it opined that sample is misbranded within the meaning of sec.2(ix)(e) of the PFA Act. Thereupon, complainant Food Inspector applied for sanction as required under sec.20 of the PFA Act from the competent authority and after getting sanction, accused were prosecuted for selling misbranded article of food and prayed that accused should be convicted in view of provisions of sec.7(II) R/w sec.16(1)(a)(i) of the PFA Act.

4. After prosecution, accused requested to send the sample to Central Food Laboratory (hereinafter referred to as "CFL") and the same was sent to CFL for analysis. CFL, after testing, opined that the sample of "Athana Sambhar (Mayur) " is misbranded as stipulated in the provisions of sec. 2(ix)(k) of PFA Act and the Rules framed thereunder and is adulterated. Analysis Report of Food & Drugs Laboratory, Vadodara dated 15.7.97 does not say about adulteration. However, it is argued by the ld. APP Mr. Shah that report of CFL supersedes the earlier report of Food & Drugs Laboratory, Vadodara.

5. Prosecution was launched on the strength of the Analysis Report of Vadodara Laboratory. So, obviously, complainant Food Inspector had prayed for necessary sanction to prosecute the accused persons for the offences mentioned in the complaint exh.1 and referred to in para-3 of the judgment. Ld. Magistrate, considering the validity of the sanction to prosecute and considering the distinction between the offence of alleged misbranding as defined under sec.2(ix)(e) and sec. 2(ix)(k) of the PFA Act, has held that there was no prosecution for alleged adulteration or for selling misbranded article of food which is made punishable under

sec.2(ix)(k) R/w sec.7 & 16 of PFA Act. I would like to refer to relevant sections 2(ix)(e) & 2(ix)(k) of PFA Act, which read as under:-

"2. In this Act unless the context otherwise requires-

xxx xxx xxx

(ix) "misbranded"- an article of food shall be deemed to be misbranded -

xxx xxx xxx

(e) if false claims are made for it upon the label or otherwise;

xxx xxx xxx

(k) if it is not labelled in accordance with the requirement of this Act or rules made thereunder;

xxx xxx xxx

6. If above definitions are read in the context of punitive sections,it can be said that a person who is found responsible in selling an article of food where false claims are made for it upon the label or otherwise, can be punished because it would amount to deemed "misbranding". In the same way, if the accused is found selling an article of food which is not labelled in accordance with the requirements of the Act or rules framed thereunder, such person also can be punished for selling misbranded article of food under the deeming provision. Ld. Magistrate, therefore, has rightly held that the complainant had prayed for sanction to prosecute the accused for the alleged criminal act of selling misbranded misbranded article of food made punishable under sec.2(ix)(e) of the PFA Act. As the report of CFL has superseded the report of Vadodara Laboratory, the prosecution for the offence punishable under sec. 2(ix)(e) of the PFA Act would not sustain. It can be said that accused were asked to face prosecution without proper sanction required to be obtained under sec.20 of the PFA Act in respect of alleged criminal act of selling an article of food allegedly not found labelled in accordance with the requirements of the Act or the rules framed thereunder. As there was no valid sanction of the competent authority to prosecute the accused for the offences referred to in clause (k) of sub-sec.(ix) of sec.2 of the PFA Act, recording of conviction for selling

an adulterated article would have been illegal and prejudicial to the defence side. Ld. Magistrate has also tried to deal with alleged findings recorded by the CFL, but ultimately,ld. Magistrate has not recorded any finding to that effect on the aspect as to microscopic examination of the alleged article of food sent for analysis. I also do not see any need to comment upon this aspect. In absence of legal and valid sanction to prosecute for a particular offence, finding of ld. Magistrate does not require any interference. There is no perversity or patent illegality in the finding. Ld. Magistrate has based his finding on a settled legal principle propounded in the decision reported in FAJ 1997 P.455. It has been held in the decision that "if as per Analysis Report of Central Food Laboratory, a distinct offence is found to have been committed, then also, proper sanction in the prescribed period of limitation requires to be obtained and if prosecution fails in obtaining such sanction, then advantage should go to the accused."

7. In nutshell, I am in agreement with the findings recorded by the ld. Magistrate as the same are just, legal and proper and there is no perversity or error apparent of facts and/or law. Hence, there is no merits in this appeal and the same requires to be dismissed.

8. In the result, appeal is dismissed. Impugned order of acquittal passed by the ld. Magistrate is hereby confirmed.

14.02.2001 [C.K. BUCH, J]

*rawal